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Testimony in Opposition to House Bill No. 6921, An Act Concerning Invasions of Privacy

Good afternoon Senator Coleman, Representative Tong and distinguished members of the Judiciary Committee. My name is David McGuire. I am the Staff Attorney at the American Civil Liberties Union of Connecticut (ACLU-CT) and I'm here to testify in opposition of House Bill No. 6921, An Act Concerning Invasions of Privacy. Our more serious concern is about Section 8 which addresses what is colloquially known as "revenge porn."

The ACLU-CT recognizes that when someone shares intimate images that were meant to be kept private the impact can be devastating, particularly in the context of an intimate partner sharing images without permission as revenge porn. Yet laws concerning this issue must be narrowly and carefully tailored to address the harm of revenge porn without chilling protected speech, which includes taking and communicating photographs and other images. This can be achieved with legislation that criminalizes only wrongful actors who violate a reasonable agreement or understanding of confidentiality in sharing the image, gives clear definitions of what images may and may not be shared and respects protected speech. I urge you to reject or amend House Bill No. 6921 because it does not meet these criteria in its current form.

If passed this bill would permit prosecutors to charge people with the most serious misdemeanor in Connecticut, punishable by up to one year in jail, for disseminating a photograph-even one that the victim may have disseminated, without any need to prove that any actual harm to the victim resulted from its reissuance.

Courts have consistently held that the First Amendment protects third parties from penalties for disseminating information, as long as they obtained the information without engaging in any illegal actions themselves. This bill would violate this rule by making it a crime for third parties to share images, even if they had no involvement in or knowledge of the initial violation of privacy. To impose criminal penalties on uninvolved third parties sharing legally obtained images in this manner violates the core principles of freedom of speech and of the press.

As written, this bill criminalizes sharing certain images without consent of the subject, regardless of whether there was ever an understanding or agreement that the images would be kept private. This is a critical omission. The overly broad definition of what sorts of pictures require consent to be shared only increases the potential for inappropriate prosecutions.

If this committee chooses to move forward with the revenge porn language, section 8 should be amended to incorporate language that comports more closely to the Constitution. For example, a similar law in California applies only when:

- the image records an identifiable person;
- the parties agree or understand that the image will remain private;
- distribution is by a party to the agreement;
- distribution is with the intent to cause serious emotional distress and
- distribution does actually cause such distress.

While the intent of this legislation is undoubtedly good, it would inadvertently but substantially violate the First Amendment, chill protected speech and potentially criminalize valuable speech. I respectfully urge you not to pass this bill without amending it to more narrowly tailor it to protect both.